

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PALMER/KANE LLC,

Plaintiff,

v.

ROSEN BOOK WORKS LLC dba
ROSEN PUBLISHING GROUP, INC.,

Defendant.

Case No.

Judge

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, Palmer/Kane LLC, by and through its undersigned counsel, for its Amended Complaint against Defendant Rosen Book Works LLC dba Rosen Publishing Group, Inc., alleges as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement by reason of Defendant's infringing uses of Plaintiff's copyrighted photographs.
2. This Court possesses subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. Sections 1331 and 1338(a), because this action arises under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq.
3. This Court possesses general personal jurisdiction over Defendant Rosen Book Works LLC dba Publishing Group, Inc. ("Rosen"), pursuant to N.Y. C.P.L.R. § 301, because Rosen is engaged in such a continuous and systematic course of "doing business" in New York as to warrant finding it "present" in the jurisdiction. In addition, this Court possesses personal jurisdiction over Defendant Rosen, pursuant to N.Y. C.P.L.R. § 302(a)(1), because the Defendant transacts business within this state,

including in this judicial district, and contracts to supply goods or services in the state, including in this judicial district. On information and belief, Defendant Rosen sells and distributes its publications via its employees and agents in New York and throughout the United States, including publications that are at issue in this action, in which Palmer/Kane's photographs are unlawfully reproduced. Further, Defendant Rosen has a principal place of business in this judicial district, in the State of New York, and, on information and belief, is a New York limited liability company.

4. Venue is proper in this District under 28 U.S.C. Sections 1391(a) and (b) and 1400(a), since Defendant Rosen resides or may be found in this District and a substantial portion of the misconduct by Defendant Rosen here alleged occurred in this District.

THE PARTIES

5. Gabe Palmer, a resident of the State of Connecticut, is a professional photographer who makes his living taking and licensing photographs.

6. The Plaintiff, Palmer/Kane LLC, is a Vermont limited liability corporation with a place of business at 77 Soundridge Road, Shelton, Connecticut 06484.

7. Gabe Palmer created the photographs herein alleged as works-made-for-hire for Plaintiff or its predecessor, Palmer/Kane, Inc. (collectively "Palmer/Kane").

8. Palmer/Kane is a stock photography production company that produces commercial imagery licensed through agencies such as Corbis Corporation ("Corbis"), Getty Images, Inc. ("Getty Images") and Alamy Ltd. ("Alamy") and occasionally directly to the end user. Palmer/Kane has been in business for 38 years. Over the last 40 years, Palmer/Kane has issued, through its agents, over 5,000 licenses for book use through The

Stock Market (“TSM”) and Corbis, many of them to Defendant Rosen Publishing Group, Inc.

9. All Palmer/Kane images represented by Corbis, its predecessor TSM, Getty Images, and the majority of images represented by Alamy are licensed under the rights management (“RM”) model. RM license fees are calculated based on the specific media in which the image will appear and the exposure the image will have. Factoring the fee requires consideration of industry, media, image size, frequency, image placement, languages, geographic distribution, press run, and start/expiration dates. The licensing agency’s price calculator constitutes a good indicator of the breadth and depth of licensed use.

10. Palmer/Kane is the owner of the copyrights in and to each of the photographs of Gabe Palmer as to which a claim of copyright infringement is asserted in this Complaint.

11. On information and belief, defendant Rosen Book Works LLC dba Rosen Publishing Group, Inc. (“Rosen”) is a New York limited liability company with its principal place of business at 29 East 21st St #2, New York, NY 10010.

12. On information and belief, Rosen is a publishing company in the business of creating and publishing educational textbooks, instructional technology materials, reference works, and other similar materials and publications.

13. On information and belief, Rosen publishes through various imprints and divisions including, but not limited to, PowerKids Press, Rosen Central, Rosen Young Adult, Rosen Digital, Britannica Educational Publishing, Editorial Buenas Letras, Windmill Books and a variety of imprints and divisions around the world.

FACTS

14. Palmer/Kane is the copyright owner of all images produced by Gabe Palmer as works for hire, and bearing the credit Gabe Palmer, Palmer Kane, or the brand name “Mug Shots” or (sic) “Mugshots.” This includes the photographs of Gabe Palmer that are named, depicted and described in Exhibit A hereto.

15. Palmer/Kane LLC acquired the rights to all Palmer/Kane Inc. copyright registrations by written agreement.

16. As more fully set forth below, all of the Palmer/Kane images at issue in this Complaint have been registered with the U.S. Copyright Office. This includes each of the photographs in Exhibit A, which are registered with the U.S. Copyright Office under a certificate bearing the registration number stated in Exhibit A as to that photograph. The Palmer/Kane images at issue in this Complaint were registered with the Copyright Office as follows:

Image No.	Name	Registration No. (Date)
1	“Longshoremen”	VA 1-816-720 (Jan. 18, 2012)
2	“Woman Drawing on Notepad”	VA 1-811-724 (Oct. 12, 2011)
3	“Young People Cleaning a Meadow”	VAu 529-623 (June 25, 2001)
4	“Workers in Protective Suits Sampling Lakewater”	VAu 529-623 (June 25, 2001)
5	“Teacher Calling on Student in Spanish Class”	VA 1-297-358 (Feb. 2, 2005)
6	“Teen Ballerina Stretching”	VA 1-857-164 (Apr. 15, 2013)

7	"Mother and Daughter Doing Arts and Crafts At Home"	VAu 529-623 (June 25, 2001)
8	"Fun in the Water"	VA 1-297-358 (Feb. 2, 2005)
9	"Physically Challenged Student Raising Hand"	VAu 529-623 (June 25, 2001)
10	"Sandstone Arch in Valley of Fire"	VA 1-811-724 (Oct. 12, 2011)
11	"Police Officer with Teen"	VAu 529-623 (June 25, 2001)
12	"Students Working Together"	VA 1-297-358 (Feb. 2, 2005)
13	"Full Moon Shining"	VA 1-816-720 (Jan. 18, 2012)
14	"Amish Buggy in Upstate NY"	VAu 529-623 (June 25, 2001)
15	"Reading for the Teacher"	VAu 458-513 (May 3, 2009)
16	"Students in Middle School Library"	VA 1-297-358 (Feb. 2, 2005)
17	"Haunted House"	VAu 529-623 (June 25, 2001)
18	"Dusky Family Beach Stroll"	VA 1-297-358 (Feb. 2, 2005)

Copyright Infringement by Rosen

17. Rosen published, used and continues to use each of the photographs in Exhibit A, below, in the publications listed as to each such photograph, each of which publications was on sale as of the date of filing of the Complaint in this action, and, on information and belief, for at least three years prior thereto. Each of such uses has been

and continues to be unlicensed. Accordingly, under the separate-accrual rule applicable to copyright infringement claims, each of Rosen's unlicensed uses of Palmer/Kane's photographs within the last three years constitutes a separate infringement. Palmer/Kane is seeking recovery of damages for infringements occurring within three years of the filing of the lawsuit.

18. To the extent that any of such uses was ever licensed, such license has expired or its terms and conditions have been exceeded or otherwise violated. Facts known to Palmer/Kane regarding the specific license (or absence thereof) as to each photograph contained in Exhibit A, below, as well as the scope of use of each photograph, are set forth below.

Rosen's Unlicensed Use of Palmer/Kane Images/Photographs

19. Exhibit A contains Palmer/Kane's images/photographs appearing in Rosen books and publications in Palmer/Kane's possession and for which no evidence of a license exists. In some cases, the image/photograph was never licensed to any component of Rosen; in other cases the image was licensed many years earlier and the license expired; and in still other cases, the limited scope of any licenses that were issued have been grossly exceeded.

20. The photograph entitled "Longshoremen" shown in Exhibit A as Image 1 was registered under Certificate of Registration No. VA 1-816-720. It appears in the Rosen publication "Cool Careers Without College For People Who Love To Organize, Manage And Plan," which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in February

2008. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

21. The photograph entitled "Woman Drawing on Notepad" shown in Exhibit A as Image 2 was registered under Certificate of Registration No. VA 1-811-724. It appears in the Rosen publication "Cool Careers Without College For People Who Love Manga, Comics, And Animation," which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in February 2008. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

22. The photograph entitled "Young People Cleaning a Meadow" shown in Exhibit A as Image 3 was registered under Certificate of Registration No. VAu 529-623. It appears in the Rosen publication "Creating a City Park," which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in September 2003. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

23. The photograph entitled "Workers in Protective Suits Sampling Lakewater" shown in Exhibit A as Image 4 was registered under Certificate of Registration No. VAu 529-623. It appears in the Rosen publication "Critical Perspectives on Environmental Protection," which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in May 2008. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

24. The photograph entitled “Teacher Calling on Student in Spanish Class” shown in Exhibit A as Image 5 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Rosen publication “Extreme Careers Cryptologists,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in August 2004. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

25. The photograph entitled “Teen Ballerina Stretching” shown in Exhibit A as Image 6 was registered under Certificate of Registration No. VA 1-857-164. It appears in the Rosen publication “Improving Flexibility,” which is available for purchase on the Rosen website, www.rosenpublishing.com. No license was obtained by Rosen for use of this photograph. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

26. The photograph entitled “Mother and Daughter Doing Arts and Crafts At Home” shown in Exhibit A as Image 7 was registered under Certificate of Registration No. VAu 529-623. It appears in the Rosen publication “My World of Science: Levers in My World,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in December 2005. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

27. The photograph entitled “Fun in the Water” shown in Exhibit A as Image 8 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Rosen publication “Liquids in My World,” which is available for purchase on the Rosen

website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in December 2005. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

28. The photograph entitled "Physically Challenged Student Raising Hand" shown in Exhibit A as Image 9 was registered under Certificate of Registration No. VAu 529-623. It appears in the Rosen publication "Your Government in Action: The Duties and Responsibilities of the Secretary of Education," which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in April 2005. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

29. The photograph entitled "Sandstone Arch in Valley of Fire" shown in Exhibit A as Image 10 was registered under Certificate of Registration No. VA 1-811-724. It appears in the Rosen publication "The Shaping and Reshaping of Earth's Surface: Sedimentary Rocks and the Rock Cycle," which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in February 2006. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

30. The photograph entitled "Police Officer with Teen" shown in Exhibit A as Image 11 was registered under Certificate of Registration No. VAu 529-623. It appears in the Rosen publication "Taking Action Against Youth Crime," which is available for purchase on the Rosen website, www.rosenpublishing.com. No license was obtained by Rosen for use of this photograph in this publication. Rosen's use of Palmer/Kane's

photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

31. The photograph entitled “Police Officer with Teen” shown in Exhibit A as Image 11 also appears in the Rosen publication “Taking Action: How to Get Your City to Build a Public Skate Park,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph in this publication was licensed to Rosen in February 2006. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

32. The photograph entitled “Students Working Together” shown in Exhibit A as Image 12 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Rosen publication “The Hoover Dam,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in March 2006. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

33. The photograph entitled “Full Moon Shining” shown in Exhibit A as Image 13 was registered under Certificate of Registration No. VA 1-816-720. It appears in the Rosen publication “Earth and Space: The Sun,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was never licensed to Rosen. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

34. The photograph entitled “Amish Buggy in Upstate NY” shown in Exhibit A as Image 14 was registered under Certificate of Registration No. VAAu 529-623. It

appears in the Rosen publication “Primary Sources in American History: The Underground Railroad—A Primary Source History of the Journey to Freedom,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in August 2004. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

35. The photograph entitled “Reading for the Teacher” shown in Exhibit A as Image 15 was registered under Certificate of Registration No. VAu 458-513. It appears in the Rosen publication “Communities At Work: Who’s Who In a School Community,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in June 2005. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

36. The photograph entitled “Students in Middle School Library” shown in Exhibit A as Image 16 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Rosen publication “Writing to Explain,” which is available for purchase on the Rosen website, www.rosenpublishing.com. Use of the photograph was licensed to Rosen in May 2008. Rosen’s use of Palmer/Kane’s photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

37. The photograph entitled “Students in Middle School Library” shown in Exhibit A as Image 16 also appears in the Rosen publication “A Look at Books,” which is available for purchase on the Rosen website, www.rosenclassroom.com. Use of the

photograph for this publication was never licensed to Rosen. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

38. The photograph entitled "Haunted House" shown in Exhibit A as Image 17 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Rosen publication "Ghosts and Poltergeists," which is available for purchase on the Rosen website, www.rosenclassroom.com. Use of the photograph was licensed to Rosen in April 2006. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

39. The photograph entitled "Dusky Family Beach Stroll" shown in Exhibit A as Image 18 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Rosen publication "Near and Far at the Beach," which is available for purchase on the Rosen website, www.rosenclassroom.com. Use of the photograph was licensed to Rosen in October 2003. Rosen's use of Palmer/Kane's photograph in the above-referenced publication for the past three years and continuing is unlicensed and therefore infringing.

COUNT I

(COPYRIGHT INFRINGEMENT)

40. Palmer/Kane repeats and re-alleges each allegation set forth above in paragraphs 1-39.

41. Palmer/Kane is the sole proprietor of all rights, title and interest in and to the copyright of each of the photographs described and alleged above and in Exhibit A

that have been registered with the United States Office of Copyright pursuant to 17 U.S.C.A. § 411(a).

42. Each of said photographs contains material wholly original with Palmer/Kane and is copyrightable subject matter under the laws of the United States.

43. Rosen has infringed, and continues to infringe, Palmer/Kane's copyrights, in violation of the Copyright Act, 17 U.S.C. §101 et seq., by knowingly and willfully publishing said photographs without the consent or authorization of Palmer/Kane.

44. Rosen's infringements were and are intentional, willful, reckless and/or malicious.

45. Rosen's unauthorized and infringing conduct caused Palmer/Kane significant injuries, damages, and losses in amounts to be determined at trial.

46. Palmer/Kane seeks all damages recoverable under any applicable agreements and/or the Copyright Act, including statutory or actual damages and Rosen's profits attributable to the infringing use of Palmer/Kane's creative works and the damages suffered as a result of the lack of compensation, credit and attribution. Palmer/Kane also seeks all attorneys' fees and any other costs incurred in connection with this lawsuit.

47. As a result of the above alleged infringements, Palmer/Kane has suffered and continues to suffer irreparable harm for which damages may be insufficient.

JURY TRIAL DEMAND

48. Pursuant to Fed. R. Civ. P. 38, Palmer/Kane hereby demands a trial by jury of all issues so triable in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Palmer/Kane requests that this Court enter judgment in its favor and providing the following relief:

- A. Entry of a preliminary and permanent injunction against Rosen and anyone working in concert with Rosen from copying, displaying, distributing, advertising, promoting, selling or offering to sell Palmer/Kane's photographs, or creating, obtaining, and using substantially similar photographs, and requiring Rosen to deliver to the Court for destruction or other appropriate disposition all materials representing Palmer/Kane's photographs, including digital files representing Palmer/Kane's photographs, in the control or possession of Rosen;
- B. An award to Palmer/Kane of all damages allowable under the Copyright Act, including, but not limited to, statutory and/or actual damages, including damages incurred as a result of Palmer/Kane's loss of licensing revenue, and Rosen's profits attributable to the above-alleged infringements, as well as damages suffered by Palmer/Kane as a result of the lack of credit and attribution;
- C. An award of Palmer/Kane's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized by law, and attorneys' fees incurred in connection with this lawsuit;
- D. An award of punitive and/or exemplary damages and any other relief authorized by law; and
- E. Such other and further relief as this Court deems just and proper.

Dated: September 17, 2015

Respectfully submitted:

PALMER/KANE LLC,
By its attorneys,

/s/ Veronica M. Muñoz
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